

1 out too well.

2 MR. PHILLIPS: Well, we'll see,  
3 Your Honor.

4 THE WITNESS: It wasn't exactly a  
5 success, but a) we had the rights to do it.  
6 I mean, it's a different --

7 BY MR. PHILLIPS:

8 Q So that is something that we had a  
9 whole case about, and luckily we settled it  
10 before we ever asked Judge Sippel to determine  
11 whether we had --

12 A Yes.

13 Q -- you had the rights to do it?

14 A Yes.

15 Q Quality of tennis programming,  
16 sir --

17 JUDGE SIPPEL: I had my mind  
18 pretty well made up.

19 (Laughter.)

20 But I forgot.

21 (Laughter.)

22 MR. PHILLIPS: Sir, if you tell me

1       that we would have gotten somewhere, I'm going  
2       to go off to Minnesota right now.

3                       (Laughter.)

4                       BY MR. PHILLIPS:

5               Q       You would agree with me, Mr. Bond,  
6       that the tennis programming on Tennis Channel  
7       is well produced, wouldn't you, sir?

8               A       Yes.

9               Q       Now, I'm going to turn to another  
10       subject for a second, and I hope I don't have  
11       that much longer. I know I've been asking you  
12       questions for an hour and a half, and that's  
13       a lot faster -- if you had been here  
14       yesterday, you would have been my partner  
15       going for hours.

16                      MR. SCHMIDT: Objection again.

17                      THE WITNESS: I appreciate it.

18                      BY MR. PHILLIPS:

19               Q       You are on the cable distribution  
20       -- well, up until you switched over to NBC  
21       Universal, you were on the cable distribution  
22       side, weren't you, sir?

1           A       Yes, sir.

2           Q       And that is very different from  
3 the programming side of Comcast, isn't it,  
4 sir?

5           A       Yes.

6           Q       On the cable distribution side,  
7 you're not supposed to treat your affiliated  
8 Comcast-owned channels any better than anybody  
9 else, correct, sir?

10          A       Not -- I think the obligation is  
11 not to discriminate with respect to carriage  
12 decisions on the basis of affiliation. I  
13 don't think the obligation is that we have to  
14 treat everyone the same as we treat those  
15 services. Every service is different. So  
16 it's not that they're all treated the same.

17          Q       Certainly a fair point. But what  
18 I want to know is is that from the way that  
19 you approach your job on the cable side of  
20 this, you are supposed to treat your  
21 affiliated networks as if they were at arms  
22 length, is that fair?

1           A       Yes.

2           Q       And you're not supposed to treat  
3       them better or worse on the basis of their  
4       affiliation, correct, sir?

5           A       We're not allowed to discriminate  
6       -- I think the phrase is "not allowed to  
7       discriminate on the basis of affiliation or  
8       lack of affiliation."

9           JUDGE SIPPEL: Is that what the  
10       law says, or is that what a policy of the  
11       company?

12           THE WITNESS: Well, the policy of  
13       the company is to comply with the law, and I  
14       think that's what the law says. As a matter  
15       of practice, we do deals -- they are certainly  
16       part of the same company. There's a sibling  
17       relationship and probably a greater access to  
18       some degree. But generally speaking, we get  
19       marketplace deals, we insist on MFN  
20       protection, with those networks.

21                   We do the MFN, so we know we are  
22       getting marketplace terms. We are not

1 overpaying, so to speak, for the Comcast  
2 networks.

3 JUDGE SIPPEL: Well, I don't  
4 understand the context in which a subsidiary,  
5 affiliate, whatever you want to call it, but  
6 basically, as you said, it's a sibling, how  
7 they are going to be -- how they are going to  
8 be treated in such a way that you would be --  
9 that there would be any overreaching, unless  
10 it was done for a particular purpose, you  
11 know, for bookkeeping reasons. A lot of  
12 things go on between parent companies and  
13 subsidiaries for bookkeeping purposes.

14 THE WITNESS: Yes.

15 JUDGE SIPPEL: But why -- where  
16 would be the -- where would be the motivation  
17 to do that to a wholly-owned subsidiary? Let  
18 me put it this way. Why would it be in the  
19 interest of Comcast to keep a wholly-owned  
20 subsidiary in a non-profitable -- well, in the  
21 least profitable or in the less profitable  
22 tier? Wouldn't it be perfectly -- a business

1 decision that you want to get them into the  
2 most profitable tier?

3 THE WITNESS: I think that would  
4 be better for those networks. What happened  
5 --

6 JUDGE SIPPEL: Okay. We're back  
7 to that. Okay.

8 THE WITNESS: Yes.

9 JUDGE SIPPEL: Well, go ahead.  
10 Just finish, finish.

11 THE WITNESS: Well, what happened  
12 in the context of the renewal discussions that  
13 were discussed earlier, they were relatively  
14 straightforward. There were rate increases  
15 for those networks. They had the distribution  
16 they had. There wasn't any incremental  
17 distribution. The rate increases were, I  
18 felt, below average in the marketplace for  
19 sports networks. So I felt comfortable with  
20 the rate increases and the -- there was MFN  
21 protection. If I was wrong about the rate,  
22 there was MFN protection against other deals

1       they -- now me -- would do in the marketplace.

2               JUDGE SIPPEL: All right. I'm  
3       going to leave it there, but I may come back  
4       to it.

5               BY MR. PHILLIPS:

6               Q       Now, let me just ask you, Mr.  
7       Bond, is it really the case that a network,  
8       once it gets on, that the quality of that  
9       programming never gets reevaluated?

10              A       Well, what has -- I think -- do  
11       you want me to explain that further? Would  
12       that be helpful or -- because it is evaluated,  
13       but I -- maybe I can give you some context for  
14       what I said --

15              Q       Sure.

16              A       -- before if that would be  
17       helpful. What happens in the industry is a  
18       network -- those networks that we talked  
19       about, whether it's Comedy Central or whether  
20       it's E or whether it's Nickelodeon, or any of  
21       them, they reach a certain distribution level  
22       and they have, you know, large programming

1 budgets, and they really become firmly  
2 ensconced in customer's minds. They develop  
3 good brands. They are really part of the --  
4 you know, I think the universe of standard  
5 cable services.

6 So in terms of the revenue that  
7 you were describing earlier, the flip side of  
8 that revenue is also money that is spent on  
9 programming. So at the same time, for  
10 instance, that Versus is getting a certain  
11 amount of revenue from customers, it also has  
12 a programming budget that is probably many,  
13 many multiples of other channels out there  
14 like tennis or others. So it's a different  
15 kind of service.

16 So in the context of renewal  
17 discussions, with really any channel, whether  
18 it's owned by Comcast or not -- and while I  
19 was at Comcast I was thinking about that. I  
20 think in the eight years I was there, we never  
21 dropped a single network. So the context of  
22 those discussions are really about getting



1 good rate protection, getting as low a rates  
2 as we can get, good rate increases, and MFN  
3 protection, and new media rights, and things  
4 of that sort.

5 So that is really the center of  
6 discussion typically in the renewal  
7 conversation for those kind of networks.

8 Q Now, let me just follow up on one  
9 thing you said. I take it you would agree  
10 that more distribution means allows for more  
11 and better programming?

12 A It allows for more money to be  
13 spent on programming.

14 JUDGE SIPPEL: I'm sorry. The  
15 correlation is between distribution and what  
16 the companies are willing to pay in expenses?

17 THE WITNESS: Well, it's not --  
18 it's obviously not required. But if the  
19 company is making more money, they have more  
20 money to spend on programming. They don't  
21 have to spend it. They can do whatever they  
22 want with the money, but typically services

1       that have higher revenues have higher  
2       programming budgets.

3               JUDGE SIPPEL:  I guess I'm just --  
4       I'm just chewing on that a little bit.  It  
5       depends on -- you mean this -- you're talking  
6       about now a wholly owned.

7               THE WITNESS:  No, any programming  
8       service.

9               JUDGE SIPPEL:  Any program  
10       service?

11              THE WITNESS:  Yes.

12              JUDGE SIPPEL:  Because you don't  
13       care what -- you really don't care what the  
14       operating expenses are of the -- am I using  
15       that term in the right way?

16              THE WITNESS:  Yes.

17              JUDGE SIPPEL:  Of what an  
18       unaffiliated network is doing, as long as they  
19       are meeting their terms of the contract with  
20       you.

21              THE WITNESS:  Yes.  It was simply  
22       an observation.  I was responding to his

1 question about programming costs -- excuse me,  
2 programming expenditures.

3 BY MR. PHILLIPS:

4 Q Now, I take it that sometimes, Mr.  
5 Bond, you put a channel on a tier position,  
6 even though it maybe shouldn't be there quite  
7 yet, in the hopes that it will build that base  
8 and distribution to grow into its distribution  
9 position, is that fair?

10 A I suppose so.

11 Q Well, isn't that, to some extent,  
12 what happened with Versus in the -- where it  
13 was more broadly distributed in the middle  
14 part of the decade and -- but it wasn't really  
15 a very good service?

16 A I wouldn't say it wasn't a -- what  
17 did you say, it wasn't a very good service?

18 Q A very good service.

19 A I wouldn't say it wasn't a very  
20 good service.

21 Q Well, we have looked here -- and I  
22 won't pull it out unless you want to see it

1       now -- where Mr. Shell refers to it as a -- in  
2       2006 as a crappy channel that was dead in the  
3       water. I think you've seen that e-mail  
4       before. I think I've shown it to you.

5             A       Yes, I did see that e-mail.

6             Q       Would you disagree with that?

7             A       Yes.

8             Q       But that was Mr. Shell's job was  
9       to evaluate his programming at the time,  
10      wasn't it, sir?

11            A       Frankly, my opinion of that e-mail  
12      is he was bragging about having secured hockey  
13      and PGA for Golf Channel.

14            Q       I'm sorry. That's not my  
15      question, though. It was Mr. Shell's job at  
16      that time to evaluate his programming,  
17      correct?

18            A       Yes.

19                    JUDGE SIPPEL: This sounds like an  
20      episode from The Office, doesn't it?

21                    (Laughter.)

22                    That's something I want to get to,

1 but --

2 MR. PHILLIPS: Oh, really.

3 JUDGE SIPPEL: Yes, I'll tell you  
4 what -- I'll tell you what I read in the paper  
5 this morning.

6 MR. CARROLL: We are going to turn  
7 this into a reality TV show on NBC.

8 (Laughter.)

9 BY MR. PHILLIPS:

10 Q You know what? I've got another  
11 one for you, Mr. Bond, if I may -- if I may  
12 approach, Your Honor.

13 JUDGE SIPPEL: Please do.

14 MR. PHILLIPS: This is Tennis  
15 Channel Exhibit 80.

16 JUDGE SIPPEL: The timeframe here  
17 is late in September of [REDACTED], it appears.

18 BY MR. PHILLIPS:

19 Q Now, have you seen this before,  
20 Mr. Bond?

21 A I don't recall seeing this.

22 JUDGE SIPPEL: Can you identify,

1       then? Can somebody identify it?

2                   BY MR. PHILLIPS:

3           Q       Well, it's from Ms. Gaiski, who  
4       reports to you, correct?

5           A       Yes. Well, there's a lot of e-  
6       mails here, but --

7           Q       Right. But the top one is from  
8       Ms. Gaiski --

9           A       Yes.

10          Q       -- who reports to you and to --

11                   MR. CARROLL: Is he listed as a  
12       recipient? Just for the record, so it's  
13       clear.

14                   MR. PHILLIPS: I don't see him  
15       on --

16                   MR. CARROLL: Okay.

17                   MR. PHILLIPS: -- this letter to  
18       whom -- I'm asking Mr. Bond if he has seen it  
19       before.

20                   THE WITNESS: Go ahead.

21                   BY MR. PHILLIPS:

22          Q       Well, this took place during the

1       Versus renegotiations?

2               A       Yes.

3               Q       And I wanted to direct your  
4       attention to the middle e-mail on the second  
5       page from Mr. Harrar to a list of people  
6       including Ms. Gaiski.

7               A       Yes.

8               Q       And you're familiar with those  
9       renegotiations, were you not, sir?

10              A       Yes. I wasn't involved in this  
11      timeframe.

12              Q       You became involved thereafter?

13              A       It was after the end of the year,  
14      I believe.

15              Q       Now, and this got into a bit of a  
16      brawl, as I recall, around this time, didn't  
17      it, sir, with DirecTV threatening to cut off  
18      Versus all together?

19              A       Yes.

20              Q       They were going to drop it from  
21      the service all together at the time.

22              A       Yes, that's my understanding. I

1       wasn't really involved at this time, but, yes,  
2       that's my understanding.

3               Q       Now, in that e-mail in the middle  
4       of page 2, Mr. Harrar -- I'm sorry. Who is  
5       Mr. Harrar?

6               A       He was the manager of video  
7       products.

8               Q       Okay. And he is writing to Ms.  
9       Taylor and Ms. Gaiski and others.

10              A       Yes.

11              Q       And cc'ing Mr. Dannenbaum. Now,  
12       Mr. Dannenbaum worked on the programming side  
13       at this time?

14              A       Yes. Yes.

15              Q       And he writes, "I wouldn't get too  
16       diverted from other priorities -- us and the  
17       field. If history is a guide, it will be  
18       resolved right when we are ready." That's the  
19       fight between Comcast and DirecTV, correct?

20              A       Yes.

21              Q       Besides, with all respect to our  
22       Versus colleagues -- Versus, Tivo, NFL, or



1 Univision -- I'm not sure how many subs will  
2 make a service provider decision, or even a  
3 phone call, based on temporarily losing  
4 Versus. Do you see that, sir?

5 A I do.

6 Q Is that a sentiment you agreed  
7 with around the time of September [REDACTED]?

8 A I don't really know who would make  
9 a call. You know, I thought Versus was and is  
10 a good service, had the hockey on it, which  
11 was a strong package. I agree it's not Tivo,  
12 it's totally different than Tivo. Tivo is a  
13 technology. I agree it's not NFL and it's not  
14 Univision. It's completely distinct from  
15 those three.

16 Q Well, would you agree that -- with  
17 Mr. Harrar's sentiment that -- not sure that  
18 -- how many subs -- that means subscribers,  
19 right, sir?

20 A It is. That's what he means  
21 there.

22 Q Would make even a phone call based

1 on temporarily losing service.

2 A I think what he's saying there --  
3 I think he is really drawing a temporal point.  
4 If you look at the beginning, it says, "I  
5 wouldn't get too diverted from other  
6 priorities. If history is a guide, it will be  
7 resolved right when we are ready."

8 So I think he is drawing a  
9 temporal point that there would be a big  
10 effort, and then, right when it was -- they  
11 were ready to get going, it would be resolved.  
12 And so we didn't know how many phone calls  
13 would be -- would be generated.

14 Q Now, let me ask you just a  
15 slightly different question, Mr. Bond. If  
16 Versus had been repositioned in this time or  
17 later -- I guess, well, right around this time  
18 it was up for renegotiations with Comcast  
19 also, wasn't it?

20 A Yes. We had an existing deal, but  
21 it was amended in this time period.

22 Q Right. And if Versus had been

1 moved to the sports tier in -- in the  
2 renegotiations in [REDACTED], it would have still  
3 been available to all the Comcast subscribers  
4 that it had been available to earlier,  
5 wouldn't it, sir?

6 A Yes. That renegotiation, though,  
7 there was an existing deal in place that had  
8 a carriage commitment.

9 Q I'm sorry.

10 A It didn't --

11 Q Mr. Bond, I --

12 A -- there was not the right to move  
13 to a sports tier.

14 Q My question was just, would it  
15 still be available? If it had been  
16 repositioned to a sports tier, it still would  
17 have been available to all the Comcast  
18 subscribers that had sports tiers available.

19 A Yes.

20 Q And that was by far the vast  
21 majority of the marketplace, correct, sir?

22 A Yes.

1           Q       Thank you. Did you say that the  
2 NFL Network was a popular network at the time  
3 that you repositioned it from D2 up to the  
4 sports tier?

5           A       I think it was popular, yes.

6           Q       Now, let me -- now, Mr. Bond,  
7 channel -- networks perceive their channel  
8 placement to be something of value, don't  
9 they?

10          A       Yes.

11          Q       It's good to be -- if you're a  
12 sports network, it's good to be next to ESPN,  
13 for example, correct, sir?

14          A       Yes.

15          Q       And as a general matter, it's much  
16 better to be down there in the single and  
17 double digits than it is to be up there in the  
18 triple and quadruple digits, correct, sir?

19          A       Yes.

20          Q       And do you know why that's so?

21          A       There is a sentiment or a sense --  
22 and this is becoming a bit old-fashioned with

1 the change in technology -- but in the old  
 2 days people tended to watch television by  
 3 channel surfing, and a typical behavior  
 4 pattern was to start at Channel 1 and then  
 5 just push the Channel Up button. And so that  
 6 allowed -- that meant that the lower channel  
 7 position would tend to have higher viewership.  
 8 So that's the theory behind that.

9 Q And the same thing with groupings  
 10 of channels also. If you want to watch ESPN,  
 11 and then the thought is, if you're near ESPN,  
 12 then somebody who is surfing up and down will  
 13 get to you quickly, correct, sir?

14 A Yes.

15 Q Well, now, let me --

16 JUDGE SIPPEL: Don't a lot of  
 17 people use that menu thing?

18 THE WITNESS: They do. They do.

19 JUDGE SIPPEL: So then it doesn't  
 20 really make any -- well, you still may be  
 21 doing the same thing, though. You still may  
 22 be starting low and --

1 THE WITNESS: Sure.

2 JUDGE SIPPEL: -- scrolling up.

3 THE WITNESS: As I said, it's --  
4 in the modern world, as guidance improves,  
5 that may be a blessing for us. But it's --

6 BY MR. PHILLIPS:

7 Q It's still important today, isn't  
8 it?

9 A It is.

10 Q Let me -- if I may approach, Your  
11 Honor, I'd like to show Mr. Bond Exhibit --  
12 Tennis Channel Exhibit 100, which I believe is  
13 in.

14 Now, Mr. Bond, I'm going to give  
15 this to you because you, like me, are now a  
16 New Yorker. And you and I don't have the  
17 Comcast Channel lineup for D.C., but I  
18 probably don't need to distribute this to most  
19 of the people in this room, because they  
20 probably already know what I'm about to ask.

21 So let's look at the channel  
22 lineup, sir.

1           A       Yes, sir.

2           Q       On this lineup, can you tell me  
3 where Versus is kept?

4           A       Channel 7.

5           Q       Channel 7. And where is Golf  
6 Channel kept, sir?

7           A       Channel 11.

8           Q       Now, Versus and Golf were not one  
9 of the 11 noticed channels that are shown in  
10 Washington, were they, sir?

11          A       No.

12          Q       Comcast actually moved them up  
13 above channels that were older just to get  
14 them up there to 7 and 11, didn't they, sir?

15          A       I don't know what caused this to  
16 happen in D.C., but they are obviously on --  
17 if this is accurate, they're on Channel 7 and  
18 11.

19          Q       Okay. Sir, can you find The  
20 Tennis Channel on here? I'll give you a hint.  
21 Don't stop turning the pages until you get to  
22 the last one.

1           A       Yes. They're in the -- this is --  
2       the channel assignment for tennis is at 735,  
3       where the rest of the sports and entertainment  
4       services are. So those channels are grouped  
5       together from 715 to Channel 736.

6           Q       All right. Golf and Versus aren't  
7       in that 700 series, are they?

8           A       No, they're not part of the sports  
9       and entertainment package.

10          Q       And what is the last channel  
11       number?

12          A       736.

13          Q       Now, sometimes, in fact, your  
14       group on the cable side gets involved in  
15       making sure that your brethren over there on  
16       the programming side get good channel  
17       placement, don't you?

18          A       That's not generally what has  
19       happened. From time to time, there might have  
20       been discussions about channel incentives from  
21       the Comcast networks.

22          Q       Okay. Well, if I may approach,



1 Your Honor, I would like to show the witness  
2 Exhibit 55.

3 JUDGE SIPPEL: You may approach.  
4 Yes, sir.

5 MR. PHILLIPS: Thank you, sir.

6 JUDGE SIPPEL: Thank you.

7 THE WITNESS: Thank you.

8 JUDGE SIPPEL: Oh, this is from  
9 you in 2008.

10 THE WITNESS: Yes.

11 BY MR. PHILLIPS:

12 Q And you found the e-mail from Ms.  
13 Gaiski very helpful, did you not, Mr. Bond?

14 A Yes.

15 Q And what Ms. Gaiski is reporting  
16 to you is about the current state of affairs  
17 for Versus channel placement, correct, sir?

18 A Yes.

19 Q Ms. Gaiski, like you, is on the  
20 cable distribution side, not the programming  
21 side, sir, correct?

22 A Yes. Yes, sir.

1 Q And, therefore, she is supposed to  
2 be dealing with Versus on an arms-length  
3 basis, correct, sir?

4 A Yes.

5 Q And what she is telling you is  
6 that, out of the [REDACTED] service subs --  
7 what does that term mean, "service subs"?

8 A [REDACTED] subscribers of  
9 Versus.

10 Q Okay. That she says, "[REDACTED]  
11 [REDACTED] are adjacent to or within two or three  
12 slots of ESPN and ESPN2." Do you see that,  
13 sir?

14 A Yes.

15 Q And she says that [REDACTED] are  
16 within two channel slots of the local RSN,  
17 that's the Regional Sports Network, right,  
18 sir?

19 A Yes.

20 Q So that [REDACTED] of the  
21 channels for Versus are favorably positioned.  
22 Do you see that?